



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMra12121610

[REDACTED]
Complainant,

v.

INDIANA UNIVERSITY HEALTH,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On December 6, 2012, [REDACTED], ("Complainant") filed a Complaint with the Commission against Indiana University Health ("Respondent") alleging discrimination on the basis of race in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) [REDACTED]
[REDACTED] Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was subjected to disparate discipline because of his race. Complainant must show that 1) the employee engaged in prohibited conduct similar to that of his Filipino co-worker and 2) the disciplinary measures enforced against him were more severe than those levied against his Filipino co-worker.

It is evident that Complainant is a member of a protected class by virtue of his race, Caucasian, and it is undisputed that he suffered an adverse employment action when Respondent terminated his employment on or about June 25, 2012. Further, it is apparent that his Filipino co-worker engaged in identical behavior; however, Respondent terminated Complainant for the inappropriate behavior while it merely suspending his Filipino co-participant/ co-worker.



By way of background, Complainant was hired as a Technician in Sterile Processing on or about July 5, 2011. At all times relevant to the Complaint, Respondent maintained a Harassment and Workplace Violence Prevention policy which prohibited unwelcome physical contact, slapping, punching, pushing, or displaying otherwise physically aggressive behavior towards another person. On or about June 12, 2012, Complainant and his Filipino co-worker engaged in unprofessional acts of horseplay in the workplace, ultimately culminating in a wrestling match where both parties tore each others' clothing. An anonymous individual reported the incident to Respondent who, during the course of the investigation, discovered that both Complainant and his Filipino co-worker had been engaging in unprofessional acts of horseplay in the past. While Respondent determined that both individuals behaved in an inappropriate manner and violated Respondent's policies, it terminated Complainant while suspending his Filipino co-worker for 4 days without pay, thereby treating Complainant's similarly-situated Filipino co-worker more favorably under similar circumstances. Although Respondent contends that the Filipino co-worker "ceased to participate in the horse play" and ultimately became "a victim of [Complainant's] inappropriate actions," there is no evidence to substantiate these claims. Rather, evidence substantiates Complainant's claims that the Filipino co-worker was a full participant in the inappropriate behavior. As such, Respondent's rationale for terminating Complainant while treating his Filipino co-worker more favorably is unworthy of credence and is likely pretext for unlawful discrimination on the basis of race. As such, probable cause exists to believe that an unlawful discriminatory practice may have occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

December 19, 2013

Date

Akia A. Haynes

Akia A. Haynes, Esq.,
Deputy Director
Indiana Civil Rights Commission